MONTANA LEGISLATIVE HISTORY

Chapter 33 1977

Bill H 14 S _____ Original bill & history ✓c

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
1/7	✓C	_____	___C
_____	___C	2/23	✓C
_____	___C	_____	___C
Date Out 1/10	✓C	out 2/23	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 14

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-232, R.C.M. 1947, is amended to read as follows:

"25-232. Fees of clerk of district court. (1) At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of ~~ten-dollars-($10)~~, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of ~~ten-dollars-($10)~~.

(2) ~~And-the~~ The defendant, on his appearance, must pay the sum of ~~five-dollars-($5)-(which-includes-all-the-fees-to-be-paid-up-to-the-entry-of-judgment)~~.

(3) On the entry of judgment in favor of plaintiff, he the plaintiff must pay the additional sum of ~~five--dollars ($5)~~.

(4) ~~And--if~~ On the entry of judgment in favor of defendant, the defendant must pay the sum of ~~ten--dollars ($10)~~, ~~(which~~

(5) Items (1) through (4) ~~includes~~ include all the clerk's costs for all services rendered in any action or proceeding, except for issuing an execution or order of sale, ~~and-the-fees~~ or for issuing a transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment~~)~~.

(6) For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of ~~ten--dollars--($10)~~, ~~(which includes all costs up to the entry of judgment)~~.

(7) For entry of judgment in favor of party appealing, he must pay the sum of ~~five-dollars-($5)~~.

(8) For entry of judgment in favor of the ~~other-party~~, or respondent, he must pay the sum of ~~ten-dollars-($10)~~.

(9) Items (6) through (8) ~~(which-includes~~include all of the clerk's costs for all services rendered on such appeal~~)~~.

(10) The clerk must collect the following fees:

(a) ~~For~~ for certifying transcripts on appeal, where if the same are not prepared by him, ~~five-dollars-($5)~~, and in addition thereto, ~~five~~ 5 cents ~~($.05)-per~~ a page for each page in excess of ~~two-hundred-(200)~~ pages~~;~~

(b) ~~And--where~~ if he prepares such transcript, in

addition thereto, per folio, ~~fifteen~~ 15 cents ~~($.15)~~;

~~(c) For~~ for preparing copies of papers in his office, per folio, ~~fifteen~~ 15 cents ~~($.15), when certified to,~~ and in addition thereto, ~~when certified,~~ ~~fifty~~ 50 cents ~~($.50~~ for certificate and seal;

~~(d) For~~ for certificate with seal, ~~fifty~~ 50 cents ~~($.50)~~;

~~(e) For~~ for oath and jurat, with seal, ~~fifty~~ 50 cents ~~($.50)~~;

~~(f) For~~ for administering oath, ~~twenty-five~~ 25 cents ~~($.25)~~;

~~(g) For~~ for taking depositions, per folio, ~~twenty~~ 20 cents ~~($.20)~~;

~~(h) For~~ for filing and docketing transcript of judgment from all other courts and issuing execution thereon, ~~two dollars and fifty cents ($2.50)~~;

~~(i) For~~ for issuing execution and all services connected therewith, ~~one dollar ($1)~~;

~~(j) For~~ for issuing execution or order of sale on foreclosure of liens, ~~one dollar ($1);~~ ~~And~~ and in addition per folio, ~~twenty~~ 20 cents ~~($.20)~~;

~~(k) For~~ for searching records of files for each year, except for suitors or their attorneys, ~~twenty-five~~ 25 cents ~~($.25)~~;

~~(l) For~~ for transmission of records or files or

transfer of cases to other courts, ~~two dollars and fifty cents ($2.50)~~;

~~(m) For~~ for filing and entering papers on transfer from other courts, ~~five dollars ($5)~~;

~~(n) For~~ for making, acknowledging, and procuring the signature of judge to deed of lot in townsite, ~~four dollars ($4)~~;

~~(o) For~~ for issuing a marriage license, ~~five dollars ($5)~~ $15.

~~(ll) One-quarter ($1/4)~~ One-fourth of all fees collected by ~~said~~ the clerk of the district court must be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund."

Section 2. Section 36-204, R.C.M. 1947, is amended to read as follows:

"36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for ~~divorce~~ dissolution, annulment, or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana

For the County of ....

Upon the petition of	Petition for Conciliation
.....	(Under the Conciliation
Petitioner	Court Law)

And concerning

..... and

.....

Respondents.

To the Conciliation Court:

(4) The petition shall:

(a) ~~Allege~~ allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) ~~State~~ state the name and age of each minor child whose welfare may be affected by the controversy;

(c) ~~State~~ state the name and address of the petitioner, or the names and addresses of the petitioners;

(d) ~~If~~ if the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse;

(e) ~~Also~~ also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner;

(f) ~~State~~ state such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) ~~No Fees.~~ No fee ~~shall~~ may be charged by any officer for filing the petition, nor ~~shall~~ may any fee be charged by any officer for the performance of any duty

pursuant to this chapter.

(7) ~~Time--and-Place-of-Hearings.~~ The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it ~~deems~~ considers necessary to be given to the respondents. The court may, when it ~~deems~~ considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing ~~shall~~ may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) ~~Hearings--informal.~~ The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this ~~act~~ chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians,

or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) ~~Orders--Effective-time--Reconciliation-Agreements.~~ At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court ~~deems~~ considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event ~~shall~~ may such orders be effective for more than ~~thirty~~ (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time. Any reconciliation agreement between the parties may be reduced to writing, and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until ~~thirty~~ (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for ~~divorce~~ dissolution, annulment of marriage, or separate maintenance. If, ~~however~~, after the expiration of such period, the controversy between the spouses has not been terminated,

either spouse may institute proceedings for ~~divorce~~ dissolution, annulment of marriage, or separate maintenance. The pendency of a ~~divorce~~ dissolution, annulment, or separate maintenance action ~~shall~~ may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) ~~Stay--of--Divorce-Proceedings--Where-Conciliation Petition--Filed--First~~. Whenever any action for ~~divorce~~ dissolution, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage of or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) ~~Jurisdiction-Where-No-Minors--Involved~~. Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for ~~divorce~~ dissolution, annulment, or separate maintenance, but there is no minor

child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children."

Section 3. Section 48-126, R.C.M. 1947, is amended to read as follows:

"48-126. Certificate and copy ~~prima-facie~~ prima facie evidence. The original certificate of marriage, ~~made--as prescribed--in--this--chapter~~, and the record thereof by the clerk of the district court, or a copy of such record duly certified by the clerk of the district court, shall be received by all courts in all places as presumptive evidence of such marriage."

Section 4. Section 48-134, R.C.M. 1947, is amended to read as follows:

"48-134. Proof of age ~~--premarital-test~~ and medical certificate required ~~of--applicants--for--marriage--license~~.

(1) Before a person, who is authorized by law to issue marriage licenses, ~~shall~~ may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age, and, if such applicant is a minor, ~~the consent required by section 48-118~~ the approval required by 48-308, and shall ~~also~~ file with him a medical certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a medical certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than ~~twenty (20)~~ days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is validly able to obtain a marriage license in this state is also validly able to give ~~his or her~~ consent to any examinations and tests required by this ~~act~~ section. In submitting the blood specimen to the laboratory, the physician, or any other person authorized by the laws of Montana to make such a medical certificate, shall designate that it is a premarital test."

Section 5. Section 48-135, R.C.M. 1947, is amended to read as follows:

"48-135. Contents and form of medical certificate. (1) The medical certificate shall contain a statement, from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test;

(b) the date it was made;

(c) the name and address of the physician, or ~~to any~~ other person authorized under the laws of Montana to make the test;

(d) to whom the test was sent; and

(e) the name and address of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) The ~~said~~ certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state approved by the department ~~of health and environmental sciences~~. This form is hereinafter referred to in this act as "the certificate form."

Section 6. Section 48-137, R.C.M. 1947, is amended to read as follows:

"48-137. Definition of test -- rules ~~and--regulations~~. For the purpose of this act, a standard serological test shall be a test for ~~syphilis~~, rubella immunity, and syphilis, as approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department ~~of-health-and-environmental sciences~~ or a laboratory approved by that department. Any other state, or United States public health service or United States armed forces laboratory shall be considered approved for the purposes of this act. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences."

Section 7. Section 48-139, R.C.M. 1947, is amended to read as follows:

"48-139. Penalties. (1) ~~Any~~ An applicant for a marriage license, a physician, or other person authorized by the laws of Montana to make ~~such~~ a medical certificate, or any person in charge of, or authorized to make ~~such~~ reports or statements for a laboratory who ~~shall~~ misrepresent

misrepresents his identity or any of the facts called for by the certificate form prescribed by this act~~,~~, or any licensing officer who ~~shall issue~~ issues a marriage license without having received the certificate form or who ~~shall~~ have has reason to believe that any of the facts on the certificate form have been misrepresented, and ~~shall~~ nevertheless ~~issue~~ issues a marriage license~~,~~, or any person who ~~shall~~ otherwise ~~fail~~ fails to comply with the provisions of this act ~~shall be~~ is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than ~~one hundred dollars ($100.00)~~.

(2) ~~Certificates~~ Medical certificates, laboratory statements or reports, and applications~~, in this act~~ referred to in this act ~~and the information therein contained, shall be~~ are confidential and ~~shall~~ may not be divulged to or open to inspection by any person other than state or local health officers or their ~~duly authorized~~ representatives. ~~Any~~ A person who ~~shall divulge~~ divulges such information or ~~open~~ opens to inspection such certificates, statements, or reports, or applications, without authority, to any person not by law entitled to the same, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than ~~one hundred dollars ($100.00)~~."

Section 8. Section 48-146, R.C.M. 1947, is amended to

read as follows:

"48-146. License ~~required--for---marriage--place---of ceremony--county--where--license-issued~~ application. ~~(1)~~ No Montana resident ~~shall~~ may be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least ~~five--(5)~~ days immediately prior to making application therefor.

~~(2)~~ A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

~~(3)~~ If both parties be are nonresidents of the state, ~~such~~ the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of ~~such~~ the persons is a nonresident of the county where ~~such~~ the license is to issue, his part of the application may be completed and sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides."

Section 9. Section 48-309, R.C.M. 1947, is amended to read as follows:

"48-309. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, ~~by a mayor or justice of the peace,~~ or in

accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified."

Section 10. Section 48-317, R.C.M. 1947, is amended to read as follows:

"48-317. Procedure -- commencement -- pleadings -- abolition of existing defenses. ~~(1)--All--proceedings--under~~

~~this act are commenced in the manner provided by the Montana rules of civil procedure.~~

~~(2)~~(1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of ~~section~~ 48-316 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than ~~one hundred eighty~~ (180) days next preceding the commencement of this proceeding; or

(ii) ~~that~~ there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and ~~that~~ there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

~~(3)~~(2) Either or both parties to the marriage may initiate the proceeding.

~~(4)~~(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within ~~twenty~~ (20) days after the date of service file a verified response. No decree may be entered until ~~twenty~~ (20) days after the date of service.

~~(5)~~(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

~~(6)~~(5) The court may join additional parties proper for the exercise of its authority to implement this act."

Section 11. Section 48-331, R.C.M. 1947, is amended to read as follows:

"48-331. Jurisdiction -- commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within ~~six~~ (6) months before commencement of the proceeding and the child

is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with ~~paragraphs~~ subsections (1)(a), (1)(b), or (1)(c), of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under ~~paragraphs~~ subsections (1)(c) and (1)(d) of ~~subsection (1)~~ this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and or custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 12. Section 48-333, R.C.M. 1947, is amended to

read as follows:

"48-333. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in ~~section~~ 48-340. The court may award temporary custody under the standards of ~~section~~ 48-332 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child ~~requires~~ require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation ~~under subsection (a)(ii) or (b) of section 48-331~~ is dismissed, any temporary custody order is vacated."

Section 13. Section 61-105, R.C.M. 1947, is amended to read as follows:

"61-105. Custody ~~of legitimate~~ services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to ~~its~~ the custody, services, and earnings of the child. If either parent be dead, or unable,

or ~~refuse~~ refuses to take the custody, or has abandoned his or her family, the other is entitled to ~~its~~ the custody, services, and earnings of the child."

Section 14. Section 61-109, R.C.M. 1947, is amended to read as follows:

"61-109. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child, out of ~~its~~ the child's property, for ~~its~~ the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for ~~its~~ the child's benefit."

Section 15. Section 61-113, R.C.M. 1947, is amended to read as follows:

"61-113. Remedy when a parent dies without providing for the support of ~~his~~ child. If a parent chargeable with the support of a child dies, leaving ~~it~~ the child chargeable to the county, and leaving an estate sufficient for ~~its~~ the child's support, the county commissioners of the county may claim provision for ~~its~~ the child's support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and the next of kin of the parent."

Section 16. Section 61-118, R.C.M. 1947, is amended to read as follows:

"61-118. Compensation and support of ~~adult--child~~ person after attaining majority. Where a ~~child~~ person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor."

Section 17. Section 61-122, R.C.M. 1947, is amended to read as follows:

"61-122. ~~Custody~~ When custody may be awarded without ~~divorce~~ dissolution proceedings ~~when-parents-seperated~~. When a husband and wife live in a state of separation, without ~~being--divorced~~ the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. ~~The--decision--of--the court--must--be--guided--by--the-rules-prescribed-in-section 91-4515.~~"

Section 18. Section 61-208, R.C.M. 1947, is amended to read as follows:

"61-208. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) ~~The~~ the full names, ages, and place of residence of the petitioners, and, if married, the place and date of

the marriage;

(b) ~~When~~ when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) ~~The~~ the date and place of birth of child, if known;

(d) ~~The~~ the name used for the child in the proceeding, and, if a change in name is desired, the new name;

(e) ~~That~~ that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) ~~A~~ a full description and statement of value of all property owned or possessed by the child;

(g) ~~Facts~~ facts, if any, which excuse consent on the part of a parent, to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the state department of social and rehabilitation services, and An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court."

Section 19. Section 61-211, R.C.M. 1947, is amended to read as follows:

"61-211. Interlocutory and final decree. (1) Upon examination of the report described in section 61-209, if such report has been ~~deemed~~ considered necessary by ~~said~~ the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why ~~said~~ the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of ~~said~~ the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the

petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person ~~shall have the right to~~ may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at ~~said~~ the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption~~, or on the father of an illegitimate child~~; or on any parent whose consent to adoption is not required under the provisions of section 61-205~~,~~ or 61-325, and service of process shall not be made on any parent who has relinquished his child to the state department of social and rehabilitation services or an adoption agency licensed by the state department ~~of social and rehabilitation services~~.

(6) After an interlocutory decree~~, as aforesaid,~~ has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within ~~six (6)~~ months on any circumstances or conditions which may have a bearing on the adoption. After ~~six (6)~~ months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for

final hearing. Notice of the time and date of the hearing shall be served on the ~~state~~ department of social and rehabilitation services, and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of ~~said~~ the child."

Section 20. Section 61-214, R.C.M. 1947, is amended to read as follows:

"61-214. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder to in the district court by any person aggrieved thereby, in the manner provided for appeals from ~~said~~ the court in other civil matters."

Section 21. Section 61-309, R.C.M. 1947, is amended to read as follows:

"61-309. Jurisdiction -- venue. (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for ~~divorce~~ dissolution,

annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this act, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, ~~including--Rule--4B--of--the Montana--Rules-of-Civil-Procedure~~, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana ~~Rules~~ rules of ~~Civil-Procedure~~ civil procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced."

Section 22. Section 61-323, R.C.M. 1947, is amended to read as follows:

"61-323. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 61-307(4).

(2) In the best interest of the child or the mother, the court may, and upon the ~~provision's~~ promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on

behalf of the child all amounts paid in performance of the promise."

Section 23. Section 93-505, R.C.M. 1947, is amended to read as follows:

"93-505. Sittings of court -- when private. In an action for ~~divorce~~ dissolution of marriage, criminal conversation, or seduction~~, or breach of promise of marriage~~, the court may direct the trial of any issue of fact joined therein to be private, and exclude all persons except the officers of the court, the parties, their witnesses, and counsel~~s~~, provided, that in any cause the court may, in the exercise of a sound discretion, during the examination of a witness, exclude any or all witnesses in the cause."

Section 24. Section 93-2601-60, R.C.M. 1947, is amended to read as follows:

"93-2601-60. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense~~s~~, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken."

Section 25. Repealer. Sections 36-110, 36-130, 36-131, 48-112, 48-123, 48-144, and 93-2201-6, R.C.M. 1947, are repealed.

-End-

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LC 0035

1977 Legialture
Code Commissioner Bill - Summary

House Bill No. 14

TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 25-232. Changed the amount of the marriage license fee to $15, to conform with 48-306, the later statute.

Section 2. 36-204(12). Changed "of" to "or" to correct obvious grammatical error.

Section 3. 48-126. Deleted "made as prescribed in this chapter" since the marriage certificate is no longer prescribed by chapter 1 of Title 48, but rather by the director of the department of health and environmental sciences pursuant to 48-305.

Section 4. 48-134. Premarital test. The language ". . . the consent required by section 41-118 . . ." is obsolete because 41-118 has been repealed. It is changed to read ". . . the approval required by 48-308" which permits judicial approval as well as parental consent. Also the word "certificate" has been changed to "medical certificate" to avoid possible confusion with "marriage certificate".

Section 5. 48-135. Changed "certificate" to medical certificate" for above reason. In (1)(c) deleted "to any" to correct apparent grammatical error.

Section 6. 48-137. Changed ". . . syphilis, rubella immunity, approved by the department . . ." to ". . . rubella immunity and syphilis, as approved by the department . . ." for grammatical clarity. Added "or" for same reason.

Section 7. 48-139. Changed "certificate" to "medical certificate". Added "applications" in second sentence of second paragraph to make it conform to 1st sentence.

Section 8. 48-146. In (3) added an "and" for grammatical reasons.

Section 9. 48-309. Added mayors and justices of the peace to the list of persons who may solemnize marriages. Those officers were apparently inadvertently deprived of such authority upon the adoption in 1975 of the uniform marriage and divorce act.

Section 10. 48-317(1). This subsection is deleted as it is merely redundant to 48-315(1).

Section 11. 48-331(5). Changed "and" to "or" in this subsection since it would be impossible generally to notify all three (parent, guardian, and custodian).

Section 12. 48-333(3). Deleted reference to "(a)(ii) or (b)" as unnecessary and ambiguous. The proper reference seems to be "(4)(a)(ii) or (4)(b)", however "(1)(a)(ii) or (1)(b)" might also be relevant. Best alternative is to delete the reference.

Section 13, 14, and 15. 61-105, 61-109, 61-113. Children are referred to as "it" in these sections. Changed references to "the child" instead.

Section 16. 61-118. Changed references to "adult child" and "child, after attaining majority" to "person, after attaining majority" to avoid reference to the impossible person.

Section 17. 61-122. Deleted the last sentence because 91-4515 has been repealed. The bill which repealed that section did not replace its provisions, however other provisions for determination of custody are set forth in the uniform marriage and divorce act. If desired, the reference to "91-4515" could probably be replaced with "48-332 through 48-340", or "this chapter".

Section 18. 61-208(2). This subsection contemplates two copies of the petition, one to be retained by the court, and the other to be sent to several different parties, a task which would require the services of a magician. The second sentence is amended to provide for additional copies when needed to be sent to additional parties.

Section 19. 61-211. The fifth paragraph states that in the case of adoption of an illegitimate child, service of process is not required on the father. This seems to conflict with 61-325, which requires notice be given unless and until a decree is entered terminating such father's parental rights. Amended by striking " . . . or on the father of an illegitimate child . . ." and adding "61-325" after ". . . or on any parent whose consent to adoption is not required under the provisions of section 61-205 or 61-325 . . ."

Section 20. 61-214. Changed "to" to "in" for grammatical reasons. Orders, etc. are rendered "in" a court, not "to" a court.

Section 21. 61-309. Deleted ". . . including rule 4B of the Montana Rules of Civil Procedure . . ." as compliance with rule 4B is required later in the same sentence. Use of the words is awkward and redundant.

Section 22. 61-323(2). Changed ". . . provision's request . . ." to "promisor's request . . ." to correct apparent error.

Section 23. 93-505. Deleted "breach of promise of marriage" since by authority of 17-1202 such actions may no longer be brought.

Section 24. 93-2601-60. Added "may" to correct apparent error. The alternative substitution would be "shall".

Section 25. Repealers.

36-110. This section and 36-128 are redundant. Repealed this section.

36-130. This section and 36-105 are redundant. Repealed this section.

36-131. This section disallowing courtesy is replaced by 91A-2-112 of the uniform probate code.

48-112. Lack of chastity as releasing a party from a contract to marry. This section is probably obsolete and at any rate would seem to be impliedly repealed by 17-1202, which abolishes the cause of action for breach of a promise to marry, hence the marriage contract. It should be noted that 17-1202, which is the later statute, although disallowing action for breach of marriage promise, still preserves actions based on fraud or unjust enrichment.

48-123, 48-144. Form of marriage certificate and license. The Uniform Marriage and Divorce Act requires the director of the department of health and environmental sciences to prescribe the forms for the marriage certificate and license (48-305), hence these forms previously prescribed by the legislature are impliedly inapplicable.

93-2201-6. Admission of adultery. Adultery is no longer a ground, per se, for divorce (see 48-316), hence this section is obsolete.

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 14	act to revise and clarify the laws relating to marriage, husband and wife, reconciliation, dissolution of marriage, support, parent etc.	1-4-76	Kvaalen	Friday 7th	amended "do pass"	1-10-77
HB 22	to extend validity of consent to minors to abortion in conformance with the Montana Abortion Control Act	1-4-76	Kvaalen	Tuesday 11th	do pass as amended	1-13-77
HB 27	act for the revision and clarification of laws relating to corporations, partnerships and associations	1-4-76	Kvaalen	Friday 7th	amended "do pass"	1-10-7
HB 28	act to raise the legal age for consuming or possessing alcoholic beverages to 19	1-4-76	Bengston	Tuesday 11th	do pass as amended	1-12-77
HB 29	act to submit to the electors an amendment to the constitution to raise the legal drinking age for consuming or possessing alcoholic beverages to 19	1-4-76	Bengston	Tuesday 11th	do pass as amended	1-12-77
HB 36	act to standardize the grounds for unlawful discrimination to include the term	1-4-76	Marks	Friday 7th	"do pass'	1-10-77

JUDICIARY COMMITTEE

January 7, 1977

The third meeting of the House Judiciary Committee was called to order in room 436, the Capitol Building, Helena, Montana at 8:00 a.m. with Chairman Scully presiding. All members were present with the exception of Representatives Seifert and Kennerly, absent.

Scheduled for hearing were: House Bills 14, 27, 36, 43, and 46.

CHAIRMAN SCULLY: I would like to announce the addition of Representative Conroy to the Judiciary Committee.

CHAIRMAN SCULLY: We will open the hearing on House Bill #14, sponsored by Representative Kvaalen, District #53.

PROPONENT: Dave Cogley staff counsel for the Code Commissioner, explained the summary, which is to generally revise and clarify the law relating to marriage, husband and wife, reconciliation, dissolution of marriage, support, parent and child, and adoption. In some sections. crossing out to avoid duplication. In some cases, correction of typographical errors, minor changes in wording, sections having been repealed.

Diana Dowling explained that there are now 99 subject areas and when they are finished there will be 48 to be presented to the legislature in 1979.

The hearing closed on House Bill #14, with no opponents.

CHAIRMAN SCULLY: We will open the hearing on House Bill #43, sponsored by Representative Kvaalen.

PROPONENT: Joan Mayer, staff attorney, Legislative Council, explained the changes made, such as rewording, deleting archaic language, deleting sections that have been repealed, correction of errors, made more specific generally. In cases of duplication, generally suggested that the older statute be repealed.

CHAIRMAN SCULLEY: Is there any reference in the code to judicial officer meaning an attorney?

After some discussion, Mr. Sculley directed Jim Gardner, the legal researcher, to check on this.

CHAIRMAN SCULLEY: Will there be a place, a library, in the legislati council where we can find all this?

DIANA DOWLING: It will not have an official name, but yes, there will be a specific place made available.

Hearing closed on House Joint Resolution #3.

The committee then went into executive session.

REPRESENTATIVE LORY: I move the adoption of HJR #3.
Second by Representative Dussault.

There was some discussion about whether clerks and secretaries could be used.

RAY STEWART: New court administration:
It would be 90% funded by the court of criminal control. He explained the kinds of cases, whether civil or criminal, the collecting of data process, etc.

REPRESENTATIVE CONROY: What confusion will this bill create? If we hold it up.

CHAIRMAN SCULLY: I just thought it would be better for confusions sake. The bill would come out after the bill for additional judges has been heard.

The motion carried to "Do Pass".

REPRESENTATIVE LORY: I move the adoption of HJR #2.
Second by Representative Eudaily.

REPRESENTATIVE TEAGUE: I move a substitute motion to amend line 1
page 2
following "report" "prepared by the court administrator staff." to be stricken
Second by Representative Holmes.

REPRESENTATIVE LORY: I move to strike "staff". (substitute motion)
Second by Representative Holmes.

The motion to amend carried with unanimous vote.

THE MOTION "do pass as amended" carried, by Representative Lory, wih a unanimous vote.

HOUSE BILL #14 The motion was made "do pass" by Representative Dussault.
Second by Representative Holmes.

REPRESENTATIVE RAMIREZ: I move to amend page 20 line 21
Strike: "or" and insert "and".

Discussion about the meaning of custodian.

"do pass as amended" The motion carried as amended by unanimous vote.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 23, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senators Roberts and Murray who were excused.

WITNESSES PRESENT:

Dave Cogley - attorney, office of Code Commissioner
Bob Pyfer - " , " " " "
Greg Morgan - " , Montana Bar Association

CONSIDERATION OF HOUSE BILL 14:

Dave Cogley from the office of the Code Commissioner, Legislative Council, explained that this recodification bill gave the power to solemnize marriages to the justices of peace.

DISPOSITION OF HOUSE BILL 14:

Senator Towe moved that H.B. 14 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 27:

Bob Pyfer from the office of the Code Commissioner, Legislative Council, appeared on this bill.

DISPOSITION OF SENATE BILL 402 (Cont'd from 2/22/77):

At this time the committee returned to the amending of S.B. 402. Sen. Towe moved the adoption of the amendments through page 10, lines 5 and 6, and the motion for each amendment carried unanimously. Senator Warden moved the adoption of all amendments subsequent to page 10, lines 5 and 6, including those proposed by Greg Morgan, Montana Bar Assn., and Gerald Neeley, Montana Medical Assn., and each of these motions carried unanimously also. Senator Warden then moved to amend the title by adding "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE", and adding a new section for this. This motion also carried unanimously. Senator Towe had been excused at 11:00 a.m. to attend the State Administration meeting as he is chairman of that committee.

Senator Warden then moved that S.B. 402 as amended DO PASS. The motion carried unanimously with Senator Towe approving the amendments made by Senator Warden and casting an affirmative vote on this motion. (For all amendments to S.B. 402, see Exhibit 1)

HOUSE BILL NO. 14

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-232, R.C.M. 1947, is amended to read as follows:

"25-232. Fees of clerk of district court. (1) At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of ~~ten dollars ($10)~~, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of ~~ten dollars ($10)~~.

(2) ~~And the~~ The defendant, on his appearance, must pay the sum of ~~five dollars ($5) (which includes all the fees to be paid up to the entry of judgment)~~.

(3) On the entry of judgment in favor of plaintiff, ~~he~~ the plaintiff must pay the additional sum of ~~five dollars ($5)~~.

(4) ~~And if~~ On the entry of judgment in favor of defendant, the defendant must pay the sum of ~~ten dollars ($10)~~, ~~(which~~

(5) Items (1) through (4) ~~includes~~ include all the clerk's costs for all services rendered in any action or proceeding, except for issuing an execution or order of sale~~, and the fees~~ or for issuing a transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment~~)~~.

(6) For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of ~~ten dollars ($10)~~, ~~(which includes all costs up to the entry of judgment)~~.

(7) For entry of judgment in favor of party appealing, he must pay the sum of ~~five dollars ($5)~~.

(8) For entry of judgment in favor of the ~~other party, or~~ respondent, he must pay the sum of ~~ten dollars ($10)~~.

(9) Items (6) through (8) ~~(which includes~~include all of the clerk's costs for all services rendered on such appeal~~)~~.

(10) The clerk must collect the following fees:

(a) ~~For~~ for certifying transcripts on appeal, ~~where~~ if the same are not prepared by him, ~~five dollars ($5)~~, and in addition thereto, ~~five~~ 5 cents ~~($.05) per~~ a page for each page in excess of ~~two hundred (200)~~ pages~~.~~;

(b) ~~And where~~ if he prepares such transcript, in

addition thereto, per folio, ~~fifteen~~ 15 cents ~~($.15)~~;

~~(c) For~~ for preparing copies of papers in his office, per folio, ~~fifteen~~ 15 cents ~~($.15)~~, ~~when certified to,~~ and in addition thereto, when certified, ~~fifty~~ 50 cents ~~($.50)~~ for certificate and seal~~;~~;

~~(d) For~~ for certificate with seal, ~~fifty~~ 50 cents ~~($.50)~~;

~~(e) For~~ for oath and jurat, with seal, ~~fifty~~ 50 cents ~~($.50)~~;

~~(f) For~~ for administering oath, ~~twenty-five~~ 25 cents ~~($.25)~~;

~~(g) For~~ for taking depositions, per folio, ~~twenty~~ 20 cents ~~($.20)~~;

~~(h) For~~ for filing and docketing transcript of judgment from all other courts and issuing execution thereon, ~~two dollars and fifty cents ($2.50)~~;

~~(i) For~~ for issuing execution and all services connected therewith, ~~one dollar ($1)~~;

~~(j) For~~ for issuing execution or order of sale on foreclosure of liens, ~~one dollar ($1)~~, ~~and~~ and in addition per folio, ~~twenty~~ 20 cents ~~($.20)~~;

~~(k) For~~ for searching records of files for each year, except for suitors or their attorneys, ~~twenty-five~~ 25 cents ~~($.25)~~;

~~(l) For~~ for transmission of records or files or

transfer of cases to other courts, ~~two dollars and fifty cents ($2.50)~~;

~~(m) For~~ for filing and entering papers on transfer from other courts, ~~five dollars ($5)~~;

~~(n) For~~ for making, acknowledging, and procuring the signature of judge to deed of lot in townsite, ~~four dollars ($4)~~;

~~(o) For~~ for issuing a marriage license, ~~five dollars ($5)~~ $15.

~~(11) One quarter (1/4)~~ One-fourth of all fees collected by ~~said~~ the clerk of the district court must be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund."

Section 2. Section 36-204, R.C.M. 1947, is amended to read as follows:

"36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for ~~divorce~~ dissolution, annulment, or separate maintenance, either spouse~~,~~ or both spouses~~,~~ may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties~~,~~ or for amicable settlement of the controversy between the spouses~~,~~ so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana

For the County of ....

Upon the petition of	Petition for Conciliation
.....	(Under the Conciliation
Petitioner	Court Law)

And concerning

..... and

.....

Respondents.

To the Conciliation Court:

(4) The petition shall:

(a) ~~Allege~~ allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy~~;~~;

(b) ~~State~~ state the name and age of each minor child whose welfare may be affected by the controversy~~;~~;

(c) ~~State~~ state the name and address of the petitioner~~,~~ or the names and addresses of the petitioners~~;~~;

(d) ~~If~~ if the petition is presented by one spouse only, name the other spouse as a respondent~~,~~ and state the address of that spouse~~;~~;

(e) ~~Also~~ also name as a respondent any other person who has any relation to the controversy~~,~~ and state the address of the person, if known to the petitioner~~;~~;

(f) ~~State~~ state such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition~~,~~ when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) ~~No Fees.~~ No fee ~~shall~~ may be charged by any officer for filing the petition~~,~~ nor ~~shall~~ may any fee be charged by any officer for the performance of any duty

pursuant to this chapter.

(7) ~~Time and Place of Hearings.~~ The court shall fix a reasonable time and place for hearing on the petition~~,~~ and shall cause such notice of the filing of the petition and the time and place of the hearing as it ~~deems~~ considers necessary to be given to the respondents. The court may, when it ~~deems~~ considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation~~,~~ and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district~~,~~ and the hearing may be had in chambers or otherwise, except that the time and place for hearing ~~shall~~ may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) ~~Hearings--Informal.~~ The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this ~~act~~ chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians~~,~~

~~or~~ psychiatrists, ~~or~~ other specialists or scientific experts, or ~~of~~ the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) ~~Orders--Effective Time--Reconciliation Agreement.~~ At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court ~~deems~~ considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event ~~shall~~ may such orders be effective for more than ~~thirty (30)~~ days from the hearing of the petition, unless the parties mutually consent to a continuation of such time. Any reconciliation agreement between the parties may be reduced to writing~~,~~ and~~,~~ with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until ~~thirty (30)~~ days after the hearing of the petition for conciliation, neither spouse shall file any action for ~~divorce~~ dissolution, annulment of marriage, or separate maintenance. If~~,--however,~~ after the expiration of such period, the controversy between the spouses has not been terminated,

either spouse may institute proceedings for ~~divorce~~ dissolution, annulment of marriage, or separate maintenance. The pendency of a ~~divorce~~ dissolution, annulment, or separate maintenance action ~~shall~~ may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) ~~Stay of Divorce Proceedings Where Conciliation Petition Filed First.~~ Whenever any action for ~~divorce~~ dissolution, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage ~~of~~ or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) ~~Jurisdiction Where No Minors Involved.~~ Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for ~~divorce~~ dissolution, annulment, or separate maintenance, but there is no minor

child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children."

Section 3. Section 48-126, R.C.M. 1947, is amended to read as follows:

"48-126. Certificate and copy ~~prima facie~~ prima facie evidence. The original certificate of marriage, ~~made as prescribed in this chapter,~~ and the record thereof by the clerk of the district court, or a copy of such record duly certified by the clerk of the district court, shall be received by all courts in all places as presumptive evidence of such marriage."

Section 4. Section 48-134, R.C.M. 1947, is amended to read as follows:

"48-134. Proof of age ~~premarital test~~ and medical certificate required ~~of applicants for marriage license.~~

(1) Before a person~~,~~ who is authorized by law to issue marriage licenses~~, shall~~ may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age~~,~~ and, if such applicant is a minor, ~~the consent required by section 48-118~~ the approval required by 48-308, and shall ~~also~~ file with him a medical certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a medical certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than ~~twenty (20)~~ days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is validly able to obtain a marriage license in this state is also validly able to give ~~his or her~~ consent to any examinations and tests required by this ~~act~~ section. In submitting the blood specimen to the laboratory, the physician~~,~~ or any other person authorized by the laws of Montana to make such a medical certificate~~,~~ shall designate that it is a premarital test."

Section 5. Section 48-135, R.C.M. 1947, is amended to read as follows:

"48-135. Contents and form of medical certificate. (1) The medical certificate shall contain a statement~~,~~ from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test~~,~~;

(b) the date it was made~~,~~;

(c) the name and address of the physician~~,~~ or ~~to any~~ other person authorized under the laws of Montana to make the test~~,~~;

(d) to whom the test was sent; and

(e) the name and address of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) The ~~said~~ certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state approved by the department ~~of health and environmental sciences~~. This form is hereinafter referred to in this act as "the certificate form~~,~~."

Section 6. Section 48-137, R.C.M. 1947, is amended to read as follows:

"48-137. Definition of test -- rules ~~and regulations~~. For the purpose of this act, a standard serological test shall be a test for ~~syphilis,~~ rubella immunity, and syphilis, as approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department ~~of health and environmental sciences~~ or a laboratory approved by that department. Any other state, or United States public health service or United States armed forces laboratory shall be considered approved for the purposes of this act. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences."

Section 7. Section 48-139, R.C.M. 1947, is amended to read as follows:

"48-139. Penalties. (1) ~~Any~~ An applicant for a marriage license, a physician, or other person authorized by the laws of Montana to make ~~such~~ a medical certificate, or any person in charge of, or authorized to make ~~such~~ reports or statements for a laboratory who ~~shall misrepresent~~

misrepresents his identity or any of the facts called for by the certificate form prescribed by this act, ~~or~~ any licensing officer who ~~shall issue~~ issues a marriage license without having received the certificate form or who ~~shall have~~ has reason to believe that any of the facts on the certificate form have been misrepresented, and ~~shall~~ nevertheless ~~issue~~ issues a marriage license, or any person who ~~shall~~ otherwise ~~fail~~ fails to comply with the provisions of this act ~~shall be~~ is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than ~~one hundred dollars ($100.00)~~.

(2) ~~Certificates~~ Medical certificates, laboratory statements or reports, and applications, ~~in this act~~ referred to in this act ~~and the information therein contained, shall be~~ are confidential and ~~shall~~ may not be divulged to or open to inspection by any person other than state or local health officers or their ~~duly authorized~~ representatives. ~~Any~~ A person who ~~shall divulge~~ divulges such information or ~~open~~ opens to inspection such certificates, statements, ~~or~~ reports, or applications, without authority, to any person not by law entitled to the same, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than ~~one hundred dollars ($100.00)~~."

Section 8. Section 48-146, R.C.M. 1947, is amended to

read as follows:

"48-146. License ~~required for marriage--place of ceremony--county where license issued~~ application. (1) No Montana resident ~~shall~~ may be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least ~~five (5)~~ days immediately prior to making application therefor.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties ~~be~~ are nonresidents of the state, ~~such~~ the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of ~~such~~ the persons is a nonresident of the county where ~~such~~ the license is to issue, his part of the application may be completed and sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides."

Section 9. Section 48-309, R.C.M. 1947, is amended to read as follows:

"48-309. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor or justice of the peace, or in

accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified."

Section 10. Section 48-317, R.C.M. 1947, is amended to read as follows:

"48-317. Procedure -- commencement -- pleadings -- abolition of existing defenses. ~~(1) All proceedings under~~

~~this act are commenced in the manner provided by the Montana rules of civil procedure.~~

~~(2)~~(1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of ~~section~~ 48-316 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than ~~one hundred eighty (180)~~ days next preceding the commencement of this proceeding~~,~~; or

(ii) ~~that~~ there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and ~~that~~ there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage~~,~~ and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

~~(3)~~(2) Either or both parties to the marriage may initiate the proceeding.

~~(4)~~(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within ~~twenty (20)~~ days after the date of service file a verified response. No decree may be entered until ~~twenty (20)~~ days after the date of service.

~~(5)~~(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

~~(6)~~(5) The court may join additional parties proper for the exercise of its authority to implement this act."

Section 11. Section 48-331, R.C.M. 1947, is amended to read as follows:

"48-331. Jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings~~,~~; or

(ii) had been the child's home state within ~~six (6)~~ months before commencement of the proceeding and the child

is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with ~~paragraphs~~ subsections (1)(a), (1)(b), or (1)(c), of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under ~~paragraphs~~ subsections (1)(c) and (1)(d) of ~~subsection (1)~~ this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, ~~and~~ ~~or~~ AND custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 12. Section 48-333, R.C.M. 1947, is amended to

read as follows:

"48-333. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in ~~section~~ 48-340. The court may award temporary custody under the standards of ~~section~~ 48-332 after a hearing~~,~~ or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child ~~requires~~ require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation ~~under subsection (a)(ii) or (b) of section 48-331~~ is dismissed, any temporary custody order is vacated."

Section 13. Section 61-105, R.C.M. 1947, is amended to read as follows:

"61-105. Custody ~~of legitimate~~, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to ~~its~~ the custody, services, and earnings of the child. If either parent be dead~~,~~ or unable~~,~~

or ~~refuse~~ refuses to take the custody~~,~~ or has abandoned his or her family, the other is entitled to ~~its~~ the custody, services, and earnings of the child."

Section 14. Section 61-109, R.C.M. 1947, is amended to read as follows:

"61-109. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child~~,~~ out of ~~its~~ the child's property~~,~~ for ~~its~~ the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for ~~its~~ the child's benefit."

Section 15. Section 61-113, R.C.M. 1947, is amended to read as follows:

"61-113. Remedy when ~~a~~ parent dies without providing for ~~the~~ support of ~~his~~ child. If a parent chargeable with the support of a child dies~~,~~ leaving ~~it~~ the child chargeable to the county~~,~~ and leaving an estate sufficient for ~~its~~ the child's support, the county commissioners of the county may claim provision for ~~its~~ the child's support from the parent's estate by civil action~~,~~ and for this purpose may have the same remedies as any creditors against that estate~~,~~ and against the heirs, devisees, and the next of kin of the parent."

Section 16. Section 61-118, R.C.M. 1947, is amended to read as follows:

"61-118. Compensation and support of ~~adult child~~ person after attaining majority. Where a ~~child~~ person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor."

Section 17. Section 61-122, R.C.M. 1947, is amended to read as follows:

"61-122. ~~Custody~~ When custody may be awarded without ~~divorce~~ dissolution proceedings ~~when parents separated~~. When a husband and wife live in a state of separation, without ~~being divorced~~ the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. ~~The decision of the court must be guided by the rules prescribed in section 91-4515.~~"

Section 18. Section 61-208, R.C.M. 1947, is amended to read as follows:

"61-208. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) ~~The~~ the full names, ages, and place of residence of the petitioners, and, if married, the place and date of

the marriage;

(b) ~~When~~ when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) ~~The~~ the date and place of birth of child, if known;

(d) ~~The~~ the name used for the child in the proceeding, and, if a change in name is desired, the new name;

(e) ~~That~~ that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) ~~A~~ a full description and statement of value of all property owned or possessed by the child;

(g) ~~Facts~~ facts, if any, which excuse consent on the part of a parent, to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the ~~state~~ department of social and rehabilitation services, ~~and~~ An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court."

Section 19. Section 61-211, R.C.M. 1947, is amended to read as follows:

"61-211. Interlocutory and final decree. (1) Upon examination of the report described in ~~section~~ 61-209, if such report has been ~~deemed~~ considered necessary by ~~said~~ the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the court, and show cause why ~~said~~ the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of ~~said~~ the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the

petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person ~~shall have the right to~~ may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at ~~said~~ the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption~~, or on the father of an illegitimate child~~; or on any parent whose consent to adoption is not required under the provisions of ~~section~~ 61-205~~,~~ or 61-325, and service of process shall not be made on any parent who has relinquished his child to the ~~state~~ department of social and rehabilitation services or an adoption agency licensed by the ~~state~~ department ~~of social and rehabilitation services~~.

(6) After an interlocutory decree~~, as aforesaid,~~ has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within ~~six (6)~~ months on any circumstances or conditions which may have a bearing on the adoption. After ~~six (6)~~ months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for

final hearing. Notice of the time and date of the hearing shall be served on the ~~state~~ department of social and rehabilitation services~~,~~ and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of ~~said~~ the child."

Section 20. Section 61-214, R.C.M. 1947, is amended to read as follows:

"61-214. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder ~~to~~ in the district court by any person aggrieved thereby, in the manner provided for appeals from ~~said~~ the court in other civil matters."

Section 21. Section 61-309, R.C.M. 1947, is amended to read as follows:

"61-309. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for ~~divorce~~ dissolution,

annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this act, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, ~~including Rule 4B of the Montana Rules of Civil Procedure~~, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana ~~Rules~~ rules of ~~Civil Procedure~~ civil procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced."

Section 22. Section 61-323, R.C.M. 1947, is amended to read as follows:

"61-323. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to ~~section~~ 61-307(4).

(2) In the best interest of the child or the mother, the court may, and upon the ~~provision's~~ promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on

behalf of the child all amounts paid in performance of the promise."

Section 23. Section 93-505, R.C.M. 1947, is amended to read as follows:

"93-505. Sittings of court — when private. In an action for ~~divorce~~ dissolution of marriage, criminal conversation, or seduction~~, or breach of promise of marriage~~, the court may direct the trial of any issue of fact joined therein to be private, and exclude all persons except the officers of the court, the parties, their witnesses, and counsel, provided that in any cause the court may, in the exercise of a sound discretion, during the examination of a witness, exclude any or all witnesses in the cause."

Section 24. Section 93-2601-60, R.C.M. 1947, is amended to read as follows:

"93-2601-60. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken."

Section 25. Repealer. Sections 36-110, 36-130, 36-131, 48-112, 48-123, 48-144, and 93-2201-6, R.C.M. 1947, are repealed.

-End-